

EXHIBIT A TO BAYREN RFP – SAMPLE ABAG CONTRACT

1. Bracketed provisions in bold typeface are instructions for completing the form contract and should be deleted after completing the instruction set.
2. Bracketed provisions in italic typeface are alternative wording for use in the form contract. The typeface of the selected provision should be converted to 'regular'. The provision not selected should be deleted.
3. These overall instructions should be deleted after creation of the draft contract.

ASSOCIATION OF BAY AREA GOVERNMENTS CONTRACT FOR SERVICES

This contract is made and entered into effective _____, 2011, by and between the Association of Bay Area Governments (ABAG), a public entity formed under the California Joint Exercise of Powers Act, Government Code Sections 6500, *et seq.* and _____ (Consultant), a **[Insert legal status (type of governmental entity, corporation, sole proprietorship, etc.) of Consultant and the state in which the status was established.]**

RECITALS

- A. ABAG has applied for grant funding **[Insert reference to application if available or otherwise identify fund source.]** from the **[Insert description of funding source and funding entity and denominate the entity as 'Grantor'.]** and **[Select one of the following phrases:]** *[has a reasonable, good faith belief that the application will be]* or *[has received notice that the application has]* approved in an amount and form that will make the grant funds (Grant) available to fund this contract.
- B. *[In advance of]* or *[Concurrent with]* award of the Grant, ABAG wishes to retain Consultant to provide **[Insert description of services.]**.
- C. Consultant has experience and expertise in providing the required services.

AGREEMENT

1. Retention of Consultant. ABAG agrees to engage Consultant and Consultant agrees to undertake, carry out, and complete in a satisfactory and proper manner certain work and services set forth in the attached Exhibit A, "Scope of Services," which is incorporated herein by this reference.
2. Time of Performance. Consultant shall begin performance of the services set forth in Exhibit A, as soon as possible after written notice to commence from ABAG. Such services shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this contract, but in any event all such services shall be completed by _____.

3. Independent Consultant. Consultant renders services under this contract as an independent contractor. None of Consultant's agents or employees shall be agents or employees of ABAG, unless otherwise agreed to by ABAG.
4. Subcontractors. Consultant may not subcontract any of the services provided for under this contract without the express written approval of ABAG, which approval shall not be unreasonably withheld. Upon termination of any subcontract, ABAG shall be notified immediately.
5. Compensation Method and Payment Procedures.

(a) Maximum Amount. Consultant shall be compensated for all services to be rendered under this contract in a maximum sum not to exceed _____ Dollars (\$_____).

(b) Compensation Method. **[Select one of the following paragraphs:]**

[Consultant will be compensated based on time expended in providing the services set forth in the scope of work. The amount of the compensation will be based on the hourly rates for the individuals, or categories of individuals, as the case may be, that is listed in Exhibit A. Consultant will not charge, and ABAG will not pay, any additional sums for work performed, except for allowed reimburseable costs.]

[Consultant will be compensated for tasks and/deliverables in the amounts set for in Exhibit A for such tasks or deliverables. Consultant will not charge, and ABAG will not pay, any additional sums for such tasks or deliverables, except for allowed reimburseable costs.]

(c) Reimburseable Costs. **[Select one of the following paragraphs:]**

[ABAG will pay Consultant for the types of necessary expenses incurred by it in performing the services required under this contract and described as 'reimburseable costs' in Exhibit A, provided that Consultant must obtain ABAG's preapproval for any such cost that exceeds _____ Dollars (\$_____).]

[ABAG will not reimburse Consultant for expenses incurred by it in performing the services required under this contract.]

(c) Invoicing Procedures. Consultant will be paid in arrears, based upon invoices submitted by Consultant to ABAG. Consultant will submit invoices for payment no more frequently than once monthly. ABAG will promptly review Consultant's invoices, approve or disapprove them for payment and submit approved invoices to Grantor. ABAG will pay Consultant within ten (10) working days after receipt from Grantor. **[Select one of the following depending on whether Consultant is compensated based on hourly rate or tasks and deliverables.]** *[Each invoice shall specify in detail Consultant's services performed, the personnel performing the work, the hours worked and billing rate.] or [Each invoice shall specify in detail progress made on each task and/or deliverable for which Consultant is requesting partial or full payment. For each task or deliverable for which Consultant is requesting partial payment, Consultant will affirmatively state that the task or deliverable will be completed for the amount set in Exhibit A.]* **[Add the following for**

contracts which reimburses consultant for eligible costs.] [The invoice will separately itemize reimbursable costs and other allowable charges with receipts attached.]

6. Termination.

(a) Termination for Cause. If, through any cause, Consultant fails to fulfill in timely and proper manner its obligations under this contract, or if Consultant shall violate any covenants, conditions, or stipulations of this contract, and should such failure or violation continue unremedied for a period of thirty (30) days after receipt of ABAG's written notice to Consultant specifying the details of such failure or violation, then ABAG may terminate this contract by giving not less than five (5) days prior written notice of such termination which specifies the effective date thereof. Upon termination under this paragraph, all unfinished or finished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by Consultant this contract, shall, at the option of ABAG, become ABAG's property and Consultant shall be entitled to receive just and equitable compensation for satisfactory work completed to the date of termination. Notwithstanding the above, Consultant shall not be relieved of liability to ABAG for damages sustained by ABAG by virtue of any breach of the contract by Consultant, and ABAG may withhold any payment to Consultant for the purpose of set-off until such time as the exact amount of damage due ABAG from Consultant is determined.

(b) Termination for Convenience. ABAG may terminate this contract at any time by giving not less than thirty (30) days prior written notice of termination to Consultant which shall specify the effective date thereof. Upon termination under this paragraph, all finished or unfinished documents and other materials described in paragraph (a) shall at the option of ABAG become its property. If the contract is terminated by ABAG as provided in this paragraph, Consultant shall be paid for services actually performed at the rate set forth in Exhibit A; provided that, if this contract is terminated due to the fault of Consultant, only the paragraph relative to termination for cause shall apply.

7. Hold Harmless. Consultant shall hold harmless, defend at its own expense and indemnify the Grantor, ABAG and its members, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from all acts or omissions to act of Consultant or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnatee.
8. Waiver. The waiver by a party of a breach by the other party of any provision of this contract shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of a different provision of this contract.
9. Assignment. This contract shall not be assigned, transferred, hypothecated or pledged by Consultant or ABAG without prior written consent of the other party which consent shall not be unreasonably withheld; provided, however, that the foregoing provision will not apply to assignments by a party to an affiliate or subsidiary of the party making the assignment.

10. Amendment. This contract may only be amended by a writing signed by both parties.
11. Entire Agreement. This contract and the attachments hereto, comprise the entire agreement between the parties as to the services to be rendered under it. This contract supersedes any and all other contracts either oral or in writing between ABAG and Consultant with respect to the subject matter hereof and contains all of the covenants and contracts between the parties with respect to such matters. ABAG and Consultant acknowledge that no representations, inducements, promises or agreements, orally or otherwise, have been made to any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contract, statement, or promise not contained in this contract shall be valid or binding.
12. Conflict of Interest. Consultant covenants that presently there is no interest, and none shall be acquired, direct or indirect, which conflicts in any material manner or degree with its performance of services as required under this contract. Consultant further covenants that in the performance of this contract, no person having any interest shall be employed by it.
13. Notices. Any notices, demands, or elections required or permitted to be given or made hereunder shall be in writing, and delivered, sent by facsimile, or sent by email as follows:
- Association of Bay Area Governments
P.O. Box 2050
Oakland, California 94604-2050
Attn:
Phone: _____
Fax: _____
Email: _____
- Consultant
[INSERT ADDRESS]
[INSERT CITY, STATE ZIP CODE]
Attn:
Phone: _____
Fax: _____
Email: _____
14. Binding on Heirs. This contract shall be binding upon the heirs, successors, assigns, or transferees of ABAG or Consultant, as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this contract other than as provided above.
15. Prohibited Interest. Consultant's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
16. Time of the Essence. Time is of the essence in this contract.

17. Uncontrollable Forces. If an event occurs that is beyond the control of a party to this contract, which prevents it from performing under this contract, neither party, as the case may be, will be considered to be in default; except the preceding condition will not apply to ABAG's obligation to make all payments when due as called for under this contract.

In addition, neither party will be liable to each other for damages or costs resulting from its failure to perform, when a failure of performance is due to an event which is beyond the control of the party affected by it (hereafter referred to as "uncontrollable forces"). The party affected by an uncontrollable force will promptly provide written notice to the other party describing the nature of the event; the length of time it is expected to continue; and the party's efforts (planned or under way) to overcome the affects of the event.

The term "uncontrollable force" as used in this Section means natural, operational and mechanical events that are not within the control of the party affected by the event, and which that party is unable to prevent or overcome. For example, these include, but are not limited to, occurrences such as acts of God, storms, floods, earthquakes, tornadoes; failure to receive needed information in a timely manner that will enable the performance of this contract; the necessity for making unscheduled, emergency repairs; labor disruptions; shortages, disruptions or shortages in the supply or transportation of materials and supplies; and acts of government authorities. Uncontrollable forces do not include economic events, like changes in market conditions or prices.

18. Records/Audit. Consultant shall keep complete and accurate books and records of all financial aspects of its relationship with ABAG in accordance with generally-accepted accounting principles. Consultant shall permit authorized representatives of ABAG and/or any of ABAG's governmental grantors to inspect, copy, and audit all data and records of Consultant relating to its performance of services under this contract. Consultant shall maintain all such data and records intact for a period of not less than three (3) years after the date that services are completed hereunder or this contract is otherwise terminated.
19. Headings. The descriptive headings used in this contract are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
20. Governing Law. This contract will be construed and enforced in accordance with the laws of the State of California.
21. Resolution of Disputes. If a dispute arises between the parties regarding a provision contained in this contract, or a party's performance of its obligations as stated in the contract, or any other matter governed by the terms of the contract, the parties agree that such dispute will be resolved in the manner prescribed in this Section.

(a) Promptly upon the occurrence of the dispute, the aggrieved party will notify the other party in writing (the "Claimant's Statement"), setting forth in sufficient detail the basis for the dispute, the aggrieved party's position and its proposal for resolution of the dispute. Within ten (10) days following receipt of the Claimant's Statement, the other party will respond in writing (the "Responsive Statement") setting forth in sufficient detail the respondent's position and its proposal for resolution of the dispute.

(b) Within ten (10) business days after the aggrieved party's receipt of the Responsive Statement, the parties will meet and attempt in good faith to expeditiously negotiate a resolution to the dispute. In attendance for each party at that opening session and throughout the dispute resolution procedure described in this Section, will be a representative or representatives of each party who is authorized to act for the party and resolve the dispute without resort to higher authority. If the parties cannot reach a mutually acceptable solution within thirty (30) days after discussions begin, either party may refer the matter to arbitration in accordance with the rules of the American Arbitration Association.

(c) Negotiations undertaken pursuant to this Section will be deemed confidential as settlement discussions. Nothing said by a party, nor any position taken during the course of the negotiations, will be introduced as evidence by the opposing party in any subsequent litigation concerning the same or related transactions.

22. Insurance Requirements. Consultant shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the Consultant's profession.

Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Errors and Omissions Liability: \$1,000,000 per occurrence.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. At the option of ABAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects ABAG, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to ABAG guaranteeing payment of losses and related investigations, claim administration and defense expenses. (Including operations, products and completed operations, as applicable.).

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) ABAG, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

(ii) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects ABAG, its officers, officials, employees and volunteers.

(iii) Any insurance or self-insurance maintained by ABAG, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(iv) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG.

(v) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to ABAG.

(f) Verification of Coverage. Consultant shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by ABAG or on other than ABAG's forms provided those endorsements conform to ABAG requirements. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

23. Severability. Should any part of this contract be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this contract, which shall continue in full force and effect; provided that, the remainder of this contract can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

24. Other Contract Provisions. The Grant requires ABAG to include certain terms, conditions or requirements in this contract, which are set forth in Exhibit B, and incorporated by this reference. Consultant is responsible for determining which, if any, of these terms, conditions or requirements applies to Consultant's provisions of services under this contract.

IN WITNESS WHEREOF, the parties have executed this contract on the dates set forth below.

Dated: _____

Consultant: _____

Signature

Print Name

Title

Dated: _____

Association of Bay Area Governments:

Ezra Rapport, Executive Director

Approved as to Legal Form and Content:

By: _____
Kenneth K. Moy, Legal Counsel
Association of Bay Area Governments

EXHIBIT A

SCOPE OF SERVICES

As applicable, include in scope of services:

1. Description of services/tasks and/or project deliverables
2. Schedule/timeline for services/tasks and/or deliverables
3. Personnel responsible for each
4. Rate of compensation for each person
5. Rate of compensation for each phase, service/task, or project deliverable

EXHIBIT B

GRANT REQUIRED CONTRACT PROVISIONS